

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM # 1: Foster Care Services: Cultural Competency

The CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held September 28, 2016, as follows:

Office Building # 9
744 P Street Room 204
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on September 28, 2016.

Following the public hearing CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below:

CONTACT: Office of Regulations Development
California Department of Social Services
744 P Street, MS 8-4-192
Sacramento, California 95814
TELEPHONE: (916) 657-2586 FACSIMILE: (916) 654-3286
E-MAIL: ord@dss.ca.gov

CHAPTERS

Title 22, Division 6, Chapters 4, 5, 7, 8.8, 9 and 9.5

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law in the California Community Care Facilities Act requires CDSS to license and regulate community care facilities, including those that care for foster children. In addition, Welfare and Institutions (W&I) Code section 16001.9 affords 27 personal rights to minors and nonminors in foster care.

Currently, statute and regulations require foster parents to complete 12 hours of initial preplacement training and eight hours of annual training. These proposed regulations establish an additional training topic to be covered during the initial and annual training pursuant to Assembly Bill (AB) 1856, Chapter 639, Statutes of 2012. These regulations will require training or instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual and transgender (LGBT) youth.

The W&I Code section 16001.9 now accords foster children the right to have a caregiver that has received instruction in cultural competency with regards to LGBT youth and best practices in caring for this population. As this is now a personal right accorded to all foster children, all foster caregivers must receive instruction in this area. Additionally, Senate Bill (SB) 528, Chapter 338, Statutes of 2013 added another personal right for all foster children, which is to have access to age appropriate, medically accurate information regarding reproductive health at 12 years of age or older, as specified. Lastly, SB 731, Chapter 805, Statutes of 2015 added the personal right of being placed in out-of-home care according to a child's gender identity regardless of the sex or gender listed on the court or child welfare documents. The SB 731 requires the department to adopt regulations consistent with this provision.

Proposed regulations have been developed to incorporate the provisions of AB 1856, SB 528 and SB 731 by amending the training, personal rights and bedroom sharing sections of Group Home, Foster Family Home, Certified Family Home, Transitional Housing Placement Program and Small Family Home regulations.

Proposed regulations allow foster youth of the opposite sex, but the same gender identity, to share a bedroom and require that in any bedroom sharing arrangement a licensee document that the arrangement ensures the health, safety and compatibility of the children. Furthermore, a revision of each facility category's personal rights section was completed to update and provide a consistent application of personal rights in each child's residential facility.

During the process of developing these regulations and amendments, CDSS has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

BENEFITS ANTICIPATED FROM REGULATORY ACTION

The benefits of the regulatory action to the health and welfare of California residents, worker safety and the state's environment are as follows: by requiring all caregivers to receive instruction in cultural competency and best practices in providing care to LGBT youth, caregivers will be better prepared to meet the unique needs of this population that research suggests make up as much as 30% of all foster children. Additionally, research suggests that one in four foster children become pregnant before the age of 17; therefore, affording the personal right of access to medically accurate information regarding reproductive health and the prevention of unplanned pregnancy and STIs and the treatment of STIs will ensure this population has access to necessary resources. Lastly, affording the right to be placed according to a child's gender identity will allow a child to live in an environment where they feel safe and comfortable.

COST ESTIMATE

1. Costs or Savings to State Agencies: None
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500 - 17630: None
3. Nondiscretionary Costs or Savings to Local Agencies: None
4. Federal Funding to State Agencies: None

LOCAL MANDATE STATEMENT

These regulations do impose a mandate upon local agencies, but not on school districts. There are no "state-mandated local costs" in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code (GC) because any costs associated with the implementation of these regulations are costs mandated by the federal government within the meaning of Section 17513 of the GC.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on the fact that businesses that currently offer training to Group Home Administrators or Caregivers need only add another training topic. This addition need not be significant as the statute does not require a specific amount of time spent on this training topic. The cost of adding instruction in cultural competency and sensitivity as it relates to best practices for LGBT youth should be absorbable.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

The CDSS has determined that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies.

STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

The Creation or Elimination of Jobs Within the State of California

These proposed regulations aim to conform with:

AB 1856 (Chapter 639, Statutes of 2012)

- Requires caregivers, as specified, to receive instruction on LGBT cultural competency and best practices
- Adds to the Foster Child's Bill of Rights the right to have a caregiver that has received instruction in cultural competency and best practice for providing care to LGBT youth

SB 528 (Chapter 338, Statutes of 2013)

- Adds to the Foster Child's Bill of Rights the right to have access to age-appropriate, medically accurate information about reproductive health care, the prevention of unplanned pregnancy and the prevention and treatment of sexually transmitted infections (STIs) at 12 years of age or older

SB 731 (Chapter 805, Statutes of 2015)

- Adds to the Foster Child's Bill of Rights the right to be placed in out-of-home care according to their gender identity, regardless of the gender or sex listed on their court or child welfare records
- Requires the department to adopt regulations consistent with this right

Specifically, the proposed regulations do the following: Add definitions of relevant terms, add a training element to existing training for all caregivers, clarify that all rights found in W&I Code section 16001.9 shall be afforded to all children in a facility, clarify that clothing must be provided and also in accordance with protected rights and allow bedroom sharing based on gender identity. The additional training element will be included in existing training programs for caregivers that are provided by vendors, foster family agencies and community colleges. Therefore, the Department has determined that this regulatory proposal will not have an impact on the creation or elimination of jobs in the State of California.

The Creation of New Businesses or the Elimination of Existing Businesses Within the State of California

These proposed regulations aim to conform with:

AB 1856 (Chapter 639, Statutes of 2012)

- Requires caregivers, as specified, to receive instruction on LGBT cultural competency and best practices
- Adds to the Foster Child's Bill of Rights the right to have a caregiver that has received instruction in cultural competency and best practice for providing care to LGBT youth

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The Expansion of Businesses Currently Doing Business Within the State of California

These proposed regulations aim to conform with:

AB 1856 (Chapter 639, Statutes of 2012)

- Requires caregivers, as specified, to receive instruction on LGBT cultural competency and best practices
- Adds to the Foster Child's Bill of Rights the right to have a caregiver that has received instruction in cultural competency and best practice for providing care to LGBT youth

SB 528 (Chapter 338, Statutes of 2013)

- Adds to the Foster Child's Bill of Rights the right to have access to age-appropriate, medically accurate information about reproductive health care, the prevention of unplanned pregnancy and the prevention and treatment of STIs at 12 years of age or older

SB 731 (Chapter 805, Statutes of 2015)

- Adds to the Foster Child’s Bill of Rights the right to be placed in out-of-home care according to their gender identity, regardless of the gender or sex listed on their court or child welfare records
- Requires the department to adopt regulations consistent with this right

Specifically, the proposed regulations do the following: Add definitions of relevant terms, add a training element to existing training for all caregivers, clarify that all rights found in W&I Code section 16001.9 shall be afforded to all children in a facility, clarify that clothing must be provided and also in accordance with protected rights and allow bedroom sharing based on gender identity. The additional training element will be included in existing training programs for caregivers that are provided by vendors, foster family agencies and community colleges. Therefore, the Department has determined that this regulatory proposal will not have an impact on the expansion of businesses currently doing business within the State of California.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety and the State’s Environment

The benefits of the regulatory action to the health and welfare of California residents, worker safety and the state's environment are as follows: by requiring all caregivers to receive instruction in cultural competency and best practices in providing care to LGBT youth, caregivers will be better prepared to meet the unique needs of this population that research suggests make up as much as 30% of all foster children. Additionally, research suggests that one in four foster children become pregnant before the age of 17, therefore, affording the personal right of access to medically accurate information regarding reproductive health and the prevention of unplanned pregnancy and STIs and the treatment of STIs will ensure this population has access to necessary resources. Lastly, affording the right to be placed according to a child’s gender identity will allow a child to live in an environment where they feel safe and comfortable.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

The CDSS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed, would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law, or would be as effective as and less burdensome to affected private persons than the proposed action.

AUTHORITY AND REFERENCE CITATIONS

The CDSS adopts these regulations under the authority granted in H&S Code sections 1502.8 and 1530 and W&I Code section 16001.9 is being referenced.

CDSS REPRESENTATIVE REGARDING THE RULEMAKING PROCESS OF THE PROPOSED
REGULATION

Contact Person: Oliver Chu (916) 657-2586
Backup: Kenneth Jennings (916) 657-2586